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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/533,589	09/25/1995	IGOR PALLEY	30-3744	9539

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

08/533,589

Applicant(s)

PALLEY ET AL.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-117 is/are pending in the application.
- 4a) Of the above claim(s) 7,39-41,58-73 and 77-117 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 8-36 is/are allowed.
- 6) ☒ Claim(s) 37,38,42-57 and 74-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Introduction*

1. This Action was necessitated by the newly presented argument regarding claims 46, and 74-76, set forth in the Appeal Brief filed March 12, 2004.

### *Specification*

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Election/Restrictions*

3. Claims 7, 39-41, 58-73 and 77-117 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 14.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 37, 38, 42-57 and 74-76 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacks (U.S. 5,249,534). Sacks teaches a container described in col. 1 lines 8-21 and a cover described in col. 2 lines 4-7. The third band is considered substantially seamless. The bands of Sacks can be

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made of SPECTRA, as set forth in col. 1 lines 33-42. This SPECTRA material is the same material used in applicant's invention, and therefore has the same characteristics.

Regarding claims 46 and 74-76, Applicant states in the Appeal Brief filed March 12, 2004 that at the time of the Sacks invention the SPECTRA SHIELD material would have been characterized by a maximum of 50 percent of its continuous fiber lengths running in one direction - the balance would have been at approximately a 90° angle to the direction of these fiber lengths. Evidence has not been presented by Applicant to defend such a statement.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 46 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks (U.S. 5,249,534) in view of Harpell et al. (U.S. 4,623,574). To the degree that applicant argues that the SPECTRA material used by Sacks did not have at least 75 percent of its fibers substantially continuous. Harpell et al. teaches that it is known to provide a material wherein the fibers are wound around an article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Sacks with at least 75 percent of the fibers being substantially continuous, in order to increase the strength of the band.

***Allowable Subject Matter***

8. Claims 1-6 and 8-36 are allowed.

*Response to Arguments*

9. Applicants' arguments filed March 12, 2004 have been fully considered but they are not persuasive. Applicants argue that the taped edge of Lewis "fatally flaws the design insofar as blast resistance is concerned and thus, teaches away from Applicants' invention." Regarding claims 37, 38, 42-57 and 74-76, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In addition, the Lewis container may be considered blast resistant, since it can contain a blast having a small magnitude.

*Conclusion*

10. In view of the new grounds of rejection for claims 21, 22 and 24, which was necessitated by the newly presented argument regarding the SPECTRA Fibers, **THIS ACTION IS MADE NON-FINAL.**

11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in

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the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshtway/nme  
Patent Examiner  
May 28, 2004